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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,699

03/22/2004

Steven McLean

5986A

8727

7590

12/04/2006

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EXAMINER

PETERSON, KENNETH E

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,699

Applicant(s)

MCLEAN, STEVEN

Examiner

Kenneth E. Peterson

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 2-4 and 7-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 16 Aug 04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

1. Applicant's election with traverse of group III in the reply filed on 03 March 06 is acknowledged. The traversal is on the ground(s) that there is no search burden. This is not found persuasive because of the reasons set forth in paragraph 7 of the restriction requirement.

The requirement is still deemed proper and is therefore made FINAL.

2. The abstract of the disclosure is objected to because it is over 150 words.

Correction is required. See MPEP § 608.01(b).

3. Claims 1,5 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,857,346 in view of Noizet '892.

Note that there is a misprint in claim 1 of U.S. Patent No. 6,857,346. It actually does include a limitation of the blade being angled, but this was somehow overlooked during printing.

U.S. Patent No. 6,857,346 recites all of the limitations except for the tank. However, this is well known in the art, as seen in Noizet (2). It would have been obvious to one of ordinary skill in the art to have modified U.S. Patent No. 6,857,346 by providing a substantially watertight housing, as taught by Noizet, in order to contain the liquids and cutting debris.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pinard in view of Cimperman et al.'178 and Noizet '892.

Pinard shows a turret (1) having holes (24) that are capable of holding punches having heads. Beneath the turret is a rotary blade (32,34) having a means (35) for rotating it faster than the turret.

Pinard lacks a spray nozzle in the cutting area. However, Cimperman shows that it is well known to spray fluid in the cutting area (8,9'), in order to cleanse the food. It would have been obvious to one of ordinary skill in the art to have modified Pinard by including a spray nozzle in the cutting area, as taught by Cimperman, in order to cleanse the food.

Pinard, as modified, lacks a holding tank. Also from the food cutting art, Noizet shows that this is well known (2). It would have been obvious to one of ordinary skill in the art to have further modified Pinard by enclosing the machine in a tank housing, as taught by Noizet, in order to contain the liquids and cutting debris.

6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cimino in view of Cimperman et al.'178 and Noizet '892.

Cimino shows a rotary support (1) having receivers (7) that are capable of holding punches having heads. Beneath the rotary support is a rotary blade (32) having a means (34) for rotating it faster than the turret.

Cimino lacks a spray nozzle in the cutting area. However, Cimperman shows that it is well known to spray fluid in the cutting area (8,9'), in order to cleanse the food. It would have been obvious to one of ordinary skill in the art to have modified Cimino by including a spray nozzle in the cutting area, as taught by Cimperman, in order to cleanse the food.

Cimino, as modified, lacks a holding tank. Also from the food cutting art, Noizet shows that this is well known (2). It would have been obvious to one of ordinary skill in the art to have further modified Cimino by enclosing the machine in a tank housing, as taught by Noizet, in order to contain the liquids and cutting debris.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth E. Peterson whose telephone number is 571-272-4512. The examiner can normally be reached on Mon-Thur, 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

kp



KENNETH E. PETERSON
PRIMARY EXAMINER